IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 163 OF 2004.

Somayya S.Emmimath. ... Applicant.

Versus.

B.I.Araganji & others. ... Respondents.

Shri S.P.Kadam for the Applicant.

Shri Badigannawar for Respondents Nos.1 to 3.

Ms.M.M.Deshmukh, A.P.P.for the Respondent-State.

CORAM : ABHAY S. OKA, J.

DATED : 16th August, 2005.

P.C.:

1. Heard the learned Advocate for the Applicant, the Advocate for the Respondents Nos.1 to 3 and the learned A.P.P. for the State.

2. The Applicant has filed a Revision Application before the Sessions Court for challenging the order dated 6th January 2003 passed by the learned Metropolitan Magistrate. By the said order, the learned Metropolitan Magistrate discharged the Respondents Nos.1 to 3. While filing the Revision Application before the Sessions Court there was a delay of 9 days. By order dated 30th September 2003 the learned Additional Sessions Court has rejected the Application made by the Applicant for condonation of delay.

3. The learned Advocate for the Applicant submitted

that the delay was only of 9 days and therefore, the same deserves to be condoned. The learned Advocate for the Respondents Nos.1 to 3 has opposed this Application by pointing out that the delay is not satisfactorily explained and there is no merit in the Revision Application filed by the Applicant.

4. The delay was admittedly of 9 days. Considering the fact that the delay was only of 9 days, the learned Addl.Sessions Judge ought to have adopted a liberal approach. The prejudice, if any, caused to the Respondents Nos.1 to 3 could have been compensated by ordering payment of costs. In my view the learned Addl. Sessions Judge has adopted a hyper technical approach and has rejected the Application for condonation of delay by passing the impugned order. The impugned order is not sustainable.

5. Hence the following order is passed:

(i) The impugned Judgment and order dated 30th September 2003 is quashed and set aside.

(ii) Misc.Application No.205 of 2003 is allowed and the delay in filing the Revision Application is condoned.

(iii) The learned Sessions Judge will decide the

Criminal Revision Application filed by the Applicant in accordance with the law.

(iv) The Applicant is directed to pay costs of Rs.2500/- to the Respondents Nos.1 to 3 within a period of four weeks from today.

Judge.